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SPECIAL CIVIL APPLICATION NO.10067 OF 1995

Date of decision: 16.2.1996

FOR APPROVAL AND SIGNATURE:

THE HON'BLE MR. JUSTICE R.K. ABICHANDANI

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Appearance:

MRS SANGEETA N PAHWA for Petitioner

Ms. Harsha Devani, A.G.P. for the respondents.

Coram : R.K.ABICHANDANI, J

Date: 16.2.1996

ORAL JUDGEMENT

Rule. The learned A.G.P. appearing for the respondents waives service of rule on behalf of the respondents. At the instance of both the sides the matter is taken up for final disposal. The petitioner challenges the order dated 9.11.1995 passed by the Revisional Authority cancelling the petitioner's licence to deal in kerosene as a retailer.

The petitioner who is having retailer's licence to deal in kerosene was issued a show cause notice dated 6.1.1994 in which several irregularities were alleged including the allegation that the petitioner had diverted the quantity of 135 liters of kerosene illegally without giving it to the 10 card holders referred to therein. It appears that during the inquiry the petitioner produced evidence of these card holders sworn on 24.1.1994. The order cancelling the petitioner's licence came to be passed on 7.4.1994. That order refers to the affidavits which

were produced by the petitioner. The competent authority without giving any reason whatsoever for not relying on this piece of evidence, just observed that the explanation given by the petitioner was not acceptable. Even the appellate authority and the Revisional authority have failed to consider these affidavits in their proper perspective and they have just ignored them by a cryptic observation that they were only concocted later on. These affidavits were produced by the petitioner within a few days after the issuance of the show cause notice and without examining them it was not proper on the part of the authorities to discard them simply by observing that they were concocted later on. The statements which are said to have been given by the card holders were not supplied to the petitioner and the petitioner had no opportunity to deal with the statements. Under these circumstances, the requirement of giving a reasonable opportunity incorporated in the proviso to clause 8(1) of the Gujarat Essential Articles Order, 1981 has been violated and the impugned orders cannot be sustained. The impugned orders are hereby set aside and the matter is now required to be considered afresh by the competent authority who shall give a reasonable opportunity to the petitioner of stating his case as per clause 8(1) proviso and take a decision in accordance with law. Rule is made absolute accordingly with no order as to costs.

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